Remarks

Claims 1-3, 5-39 and 82 are pending in the application.

The specification has been amended in the Amendment section appearing hereinabove. Almost of all of the amendments to the specification involve a deletion of material therefrom (to shorten the Abstract of the Disclosure). Support for the other amendments to the specification is present in the application at page 15, line 31.

In addition, claims 4 and 40-81 have been canceled, and claims 1, 6, 7, 24, 37, 38, 39 and 82 have been amended, in the Amendments section appearing hereinabove. Some of the amendments that were made to the dependent claims were necessitated as a result of an amendment that was made to (e) of claim 1. Support for the amendments to the claims is present in the application at page 33, lines 7-27, and in the originally-filed claims of the application.

No new matter has been added to the application in the amendments that appear hereinabove.

1. Election/Restriction Requirements

In the office action (page 2), the Examiner stated that claims 40-81 of the application are withdrawn from further consideration pursuant to 37 CFR §1.142(b) as being drawn to a nonelected invention. The Examiner stated that election was made without traverse in the reply filed on May 22, 2008, and that the subsequent requirement for an election of species is withdrawn.

In view of the foregoing statements of the Examiner in the office action, Applicants have canceled claims 40-81 from the application in the Amendments section appearing hereinabove, while reserving the right to file a divisional patent application covering these canceled claims.

2. Objection to the Abstract of the Disclosure

In the office action (pages 2-3), the Examiner objected to the Abstract of the Disclosure because of it being two paragraphs in length, and required correction.

In the Amendments section appearing hereinabove, Applicants have significantly amended the Abstract of the Disclosure. It is now only one paragraph, and only 150 words, in

length. In view of these amendments, the Examiner is respectfully requested to withdraw this objection.

3. Objection to the Disclosure Regarding Statuses of Parent Patent Applications

In the office action (page 3), the Examiner objected to the disclosure, stating that the statuses of the parent applications should be updated, and required appropriate correction.

In the Amendments section appearing hereinabove, Applicants have updated the statuses of the parent patent applications appearing in the specification (page 1, lines 11-18). In view of these amendments, the Examiner is respectfully requested to withdraw this objection.

4. Rejection of Claims 1-39 and 82 under 35 U.S.C. §112, Second Paragraph

In the office action (pages 4-5), the Examiner rejected claims 1-39 and 82 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

First, the Examiner stated that the independent claims of the application recite that the microbe-inhibiting compound is optional, and yet recite that the composition serves to inhibit microbe growth. The Examiner stated that it is unclear how such inhibition can take place when the microbe-inhibiting compound is not necessarily present.

Second, the Examiner stated that claim 24 recites a trademark, and that the relationship between a trademark and the product it identifies is sometimes indefinite, uncertain and arbitrary. The Examiner stated that the formula or characteristics of the product may change from time to time and yet it may continue to be sold under the same trademark.

A. Microbe-Inhibiting Compound

In the Amendments section appearing hereinabove, Applicants have amended the independents claims (claims 1 and 82) to have the microbe-inhibiting compound no longer be an optional component of the compositions that are described therein, and to change the weight percent of the microbe-inhibiting compound "from about 0% to about 6% by weight" to "from about 0.1% to about 6% by weight." In view of these amendments, the Examiner is respectfully requested to withdraw this claim rejection.

B. Use of Trademark in Claim 24

MPEP §608.01(v) states the following, in part, with respect to the use of trademarks in patent applications:

> "The relationship between a trademark and the product it identifies is *sometimes* indefinite, uncertain, and arbitrary. . .
> However, if the product to which the trademark refers is set forth in such language that its identity is clear, *the examiners are authorized to permit the use of the trademark if it is distinguished from common descriptive nouns by capitalization.* If the trademark has a fixed and definite meaning, it constitutes sufficient identification unless some physical or chemical characteristic of the article or material is involved in the invention. In that event, as also in those cases where the trademark has no fixed and definite meaning, identification by scientific or other explanatory language is necessary. *In re Gebauer-Fuelnegg,* 121 F.2d 505, 50 USPQ 125 (CCPA 1941)." [Emphasis added.]

The application (page 12, lines 18-21, page 34, lines 28-31, and page 63, lines 19-22) clearly describes the registered trademark "Intercept®" as being a fungistat and bacteriostat that functions as a microbe-inhibiting compound or antimicrobial inhibiting compound. It is stated (page 34, lines 28-31) to be a phosphated quaternary amine complex that is a broad-spectrum fungistat and bacteriostat, that is registered with the EPA under EPA Registration Number 43670-01, that is discussed in U.S. Patent No. 4,935,232, and that may be obtained from Interface Research Corporation (Kennesaw, GA). It is also stated (page 12, lines 18-21) to be described in an article that discusses antimicrobial inhibiting compounds, with the citation of the article being provided as "**Reference I.** 'Intercept®, A Fungistat and Bacteriostat for Incorporation into Various Products,' Interface, Inc. (Kennesaw, GA 2002)." In view of the foregoing, it is clear that the product that this trademark represents is the product that is registered by a U.S. federal agency (the Environmental Protection Agency) under EPA Registration Number 43670-01, that is discussed in U.S. Patent No. 4,935,232, and that is described in Reference I, and will *not* change from time to time.

In view of the above statements that are set forth in MPEP §608.01(v), in view of the clear description in the application of the "Intercept®" registered trademark, and in view of the failure in the office action to provide any reasoning as to why this particular trademark is

considered by the Patent Office to be indefinite (other than a recitation of law), Applicants respectfully submit that the use of the trademark "Intercept®" in claim 24 of the application does *not* render this claim indefinite under 35 U.S.C. §112, second paragraph. Nevertheless, in order to advance the prosecution of the application, Applicants have removed this trademark from claim 24 in the Amendments section appearing hereinabove. However, Applicants would greatly appreciate it if the Examiner would reconsider this issue, the teachings of MPEP §608.01(v), and the teachings that are present in the application, and consider permitting Applicants to keep this registered trademark in claim 24, which could be achieved by an Examiner's amendment.

5. Allowable Subject Matter

In the office action, the Examiner states that claims 1-39 and 82 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in the office action.

Applicants respectfully submit that claims 1-39 and 82 of the application have been amended in the Amendments section appearing hereinabove to overcome the rejections under 35 U.S.C. 112, second paragraph, that are set forth in the office action. Thus, the Examiner is respectfully requested to allow claims 1-3, 5-39 and 82 of the application, and to permit the application to proceed to issue.

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If, after considering this Amendment and Response, the Examiner believes that any issues still remain in the prosecution of the application, the Examiner is respectfully requested to: (a) telephone Applicant's undersigned attorney at a telephone number set forth hereinbelow; and (b) provide Applicant with suggested claim language that would terminate any remaining issues.

Any fees that may be required for the proper filing of this Amendment and Response and any accompanying documents with the U.S. Patent and Trademark Office ("Patent Office"), or in connection with the application generally, are hereby authorized to be deducted by the Patent Office from Deposit Account No. 122144.

Respectfully submitted,
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